

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

E*TRADE SAVINGS BANK and)
E*TRADE MORTGAGE CORPORATION)
)
Plaintiffs,)
vs.) Civil Action No. 07 CIV 8065
)
NATIONAL SETTLEMENT AGENCY,)
INC.; FAST TRACK TITLE AGENCY)
LLC; STEVEN M. LEFF; RACHEL M.)
LEFF; and RICHARD A. LEFF,)
)
Defendants.)

DEFENDANT FAST TRACK TITLE AGENCY LLC'S
MOTION TO DISMISS AMENDED COMPLAINT

NOW COMES Defendant, FAST TRACK TITLE AGENCY LLC (hereinafter "Fast Track"), by and through its attorneys, CLAUSEN MILLER P.C., and moves this Court pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Rule 12(b)(6)"), to dismiss Plaintiffs' Amended Complaint against Fast Track. In support of this motion, Fast Track states as follows:

1. Plaintiffs E*TRADE Savings Bank and E*TRADE Mortgage Corporation filed an Amended Complaint on January 4, 2008, alleging causes of action for breach of contract, conversion, breach of fiduciary duty, fraud, negligence, unjust enrichment and money had and received against all defendants arising out of the alleged conversion of funds in connection with mortgage transactions.

2. Dismissal pursuant to Rule 12(b)(6) is warranted where a plaintiff fails to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65, 1974 (May 21, 2007).

3. Applying the pleading standard set forth by the United States Supreme Court in *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (May 21, 2007), Plaintiffs' Amended Complaint

should be dismissed in its entirety because it fails to adequately plead sufficient facts to plausibly show that a cause of action exists against Fast Track.

4. The Amended Complaint must also be dismissed because Plaintiffs' speculative, conclusory allegations are insufficient to meet the two-prong test for determining liability under an alter ego theory. *Old Republic Ins. Co. v. Hansa World Cargo Serv., Inc.*, 170 F.R.D. 361 (S.D.N.Y. 1997).

5. In addition to failing to satisfy the pleading requirements set forth in *Bell Atlantic* and the failure to set forth facts to allege liability based on an alter ego theory, Plaintiffs' seven causes of action contain additional deficiencies that require dismissal.

6. In further support of its Motion, Fast Track incorporates the arguments set forth in the accompanying Memorandum of Law in Support of Motion to Dismiss.

WHEREFORE, for the reasons noted above, Defendant FAST TRACK TITLE AGENCY LLC, respectfully requests that this Honorable Court dismiss with prejudice Plaintiffs' Amended Complaint and award Fast Track such other and further relief as this Court deems just.

Respectfully submitted,

/s/ Carl M. Perri

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